

**7 SCOB [2016] HCD 64**

**HIGH COURT DIVISION**

CIVIL REVISION NO. 2218 OF 2010

No One appear

..... For the Petitioner

**Sree Paresh Chandra Pramanik**

.... Petitioner

Mr. Md. Harun-or-Rashid, with

Mr. Md. Enamul Huq Molla, Advocates

..... For Opposite Party no.1

-Versus-

**Md. Mokbul Hossain and others**

... Opposite Parties

Heard on:- 10.08.2015, 16.08.2015

Judgment dated : 17.08.2015

**Present :**

**Mr. Justice Borhanuddin**

**State Acquisition and Tenancy Act, 1950**

**Sub-section 10 of section 96**

**And**

**Succession Act, 1925**

**Section 28:**

**Section 28 of the Indian Succession Act, 1925, provides mode of computing of degrees of kindred in the manner set forth in the table of kindred set out in schedule 1. From the table of schedule 1, annexed with the counter affidavit, it is evident that brother-in-law is not a relation within three degrees by consanguinity. Pre-emptee opposite party no.1 being not a relation within three degrees by consanguinity of the donor is not entitled to get protection of Sub-section 10 of section 96 of the State Acquisition and Tenancy Act.**

**... (Para-13)**

**Judgment**

**Borhanuddin, J:**

1. This rule has been issued calling upon opposite party no. 1 to show cause as to why judgment and order dated 28.04.2010 passed by the learned Additional District Judge, Naogaon, in Civil Miscellaneous Appeal No. 10 of 2008 reversing judgment and order dated 24.01.1998 passed by the learned Senior Assistant Judge, Naogaon, in Pre-emption Case No. 3 of 2003 rejecting the case, should not be set aside and/or such other or further order or orders passed as to this court may seem fit and proper.

2. Facts relevant for disposal of the rule are that opposite party no.1 as pre-emptor instituted Miscellaneous Case No. 3 of 2003 in the Court of learned Assistant Judge, Naogaon, under section 96 of the State Acquisition and Tenancy Act contending inter alia that the pre-emptor is owner and possessor of plot nos. 1580, 1578 and 1571 which are adjacent to the case land as such, pre-emptor is a contiguous land holder; Pre-emptee opposite party no.2 secretly transferred the case land to pre-emptee opposite party no.1 by registered deed of gift

dated 08.10.2002; When preemptee opposite party no.1 went to take possession of the case land, the pre-emptor came to know about transfer of the land by deed of gift; Pre-emptee opposite party no.1 is not a relation of the pre-emptee opposite party no.2 within three degrees by consanguinity; Preemptor procured certified copy of the deed on 12.12.2002 and applied for preemption by depositing consideration money with compensation as per law.

3. Pre-emptee opposite party no.1 contested the case by filing written objection contending inter alia that the case is not maintainable, barred by limitation and bad for defect of parties. Further contending that pre-emptee opposite party no.2 nourished and brought up pre-emptee opposite party no.1 from his childhood and after attaining majority transferred the case land in favour of the preemptee-opposite party no.1 vide registered deed of gift and delivered possession thereof; Pre-emptor is not a contiguous land holder; Preemption case is not maintainable since case land transferred by deed of gift; Case is liable to be rejected.

4. After hearing the parties and assessing evidence on record, learned Senior Assistant Judge, Atrai, Naogaon, rejected the case vide judgment and order dated 24.01.1998.

5. Being aggrieved, pre-emptor as appellant filed Miscellaneous Appeal No. 10 of 2008 in the Court of learned District Judge, Naogaon. On transfer, the appeal was heard and disposed of by the learned Additional District Judge, 1<sup>st</sup> Court, Naogaon, who after hearing the case and reassessing evidence on record allowed the appeal by his judgment and order dated 28.04.2010.

6. Having aggrieved by and dissatisfied with the judgment and order, pre-emptee-respondent as petitioner preferred this revisional application under Section 115(1) of the Code of Civil Procedure and obtained the present rule with an order of stay.

7. This matter has been posted in the cause list for the last few days with name of the learned Advocates but no one appears on behalf of the petitioner to press the rule.

8. Mr. Harun-or-Rashid with Mr. Md. Enamul Huq Molla, learned advocates appearing for the opposite party no.1 by filing a counter affidavit submits that the learned Senior Assistant Judge committed an illegality in holding that preemption Case under section 96 of the State Acquisition and Tenancy Act is not maintainable against deed of gift without considering sub-section 10(c) of section 96 of the State Acquisition and Tenancy Act which prevails at the time of execution and registration of the deed of gift. He also submits that it is evident that preemptee-opposite party no.1 is not a relation of the donor within three degrees by consanguinity as such, miscellaneous case under section 96 of the State Acquisition and Tenancy Act is very much maintainable. He next submits that after reassessing evidence on record, appellate court below arrived at a finding that exhibit '2' clearly shows that plot no.1578 owned by the pre-emptor is adjacent to the case land and as such, pre-emptor is a contiguous land holder. In support of his submissions, learned advocate referred to the case of *Mir Amanullah-Vs- Mohammad Sharif and others*, reported in 44 DLR 228 and the case of *Golam Mostafa and others-Vs- Kazem Ali Khan and others*, reported in 50 DLR 544.

9. Heard the learned advocate. Perused revisional application, judgment and order passed by the courts below alongwith lower courts record and decisions cited by the learned advocate.

10. I have gone through the judgment and order passed by the courts below. It appears that learned Senior Assistant Judge rejected the case on two counts firstly, miscellaneous case for pre-emption is not maintainable against transfer of land through deed of gift and secondly,

